



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR
Writ Petition No.22718 of 2017

R.Thangarasu ... Petitioner

-Vs-

1.The District Collector
Perambalur District
Perambalur.

2.The District Revenue Officer
Perambalur District, Perambalur.

3.The Tahsildar
Perambalur District.

4.The District Forest Officer
Perambalur District
Perambalur.

5.Palaniammal ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the second respondent to consider the petitioner's representation dated 25.08.2016.

For Petitioners :Mr.R.Jayaprakash

For Respondents :Mr.Richardson Wilson, Government Counsel
- for RR 1 to 4

Mr.P.Jagadeesan - for R5

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the second respondent to consider the petitioner's representation dated 25.08.2016.

2. The case of the petitioner as projected in the representation dated 25.08.2016 and as stated in the affidavit filed in support of the writ petition is that, the petitioner is residing at Survey No.155/6, which is an agricultural land also. In that land, he constructed a house and has been residing there for long years. Adjacent to the said land, there is a forest land and since the said forest land was a barren land, the petitioner claims that he has been using the said land for ingress and egress of his property. While so, recently the fifth respondent was able to get patta in respect of the said forest land and on the strength of the patta, the fifth respondent was interfering with the ingress and egress



of the petitioner to reach his property in S.No.155/6 and in this regard even though Civil Suit was filed and some decree was passed by way of prohibitory injunction, the action on the part of the fifth respondent in preventing the ingress and egress of the petitioner to and from the petitioner's property is continuing unabated and therefore, in order to curtail the same and to cancel the alleged patta in the name of the fifth respondent to the forest land adjacent to the petitioner's land, the petitioner has given a representation dated 25.08.2016 to the first respondent District Collector with a copy marked to the second respondent and the third respondent to cancel the patta issued in favour of the fifth respondent. Since the said representation has not been considered, the petitioner has moved this writ petition with the aforesaid prayer.

3. Heard Mr.R.Jayaprakash learned counsel for the the petitioner, who would contend that, the petitioner admittedly is having his own land at S.No.155/6 which is an agricultural land also and for long number of years the petitioner has been using the nearby forest land, which is a vacant land, though belonging to the Forest Department, as ingress and egress of the petitioner's property and therefore, by virtue of that land use, the petitioner got easementary rights. When that being so, clandestinely the fifth respondent was able to get patta in respect of the forest land adjacent to the petitioner's land in S.No.155/2 and because of the patta received by the fifth respondent, with the strength of the same, she is preventing the petitioner from using the said land, which is a forest land and therefore, in order to cancel the patta for the forest land given in the name of the fifth respondent, the petitioner had given a representation dated 25.08.2016. However, the same has not been considered and patta so far has not been cancelled.

4. Learned counsel for the petitioner would also submit that, in this regard though suit has been filed by the petitioner in O.S.No.68/2003 on the file of the District Munsif Court, Perambalur, where a decree was passed on 31.10.2014 granting permanent injunction restraining the respondents therein which includes the fifth respondent, who stood as the second defendant in the said suit, the fifth respondent is continuing to prevent the petitioner from using the subject land as the ingress and egress of the petitioner's property and therefore, in this regard the patta granted in favour of the fifth respondent shall be cancelled. Therefore, for the said purpose, the representation of the petitioner dated 25.08.2016 should be directed to be considered on merits and orders shall be passed thereon within a time frame that may be stipulated by this Court, he contended.

5. On the other hand, Mr.P.Jagadeesan learned counsel for the fifth respondent would submit that, the claim made by the petitioner is not correct and the patta issued in respect of



the land in favour of the fifth respondent is not belonging to the Forest Department and therefore the same need not be cancelled. Moreover, the petitioner does not have any locus to challenge the patta issued in favour of the fifth respondent assuming it as a Government land or Forest land because, the petitioner has no locus with respect to the land in question and therefore either on the basis of his representation dated 25.08.2016 or on the basis of the Civil Court decree already obtained by the petitioner in O.S.No.68 of 2003 it would not confer any right on the petitioner to prevent the fifth respondent to claim right over the property, where patta has already been issued.

6. He would also submit that, if at all there is any dispute with regard to the easementary rights of the petitioner, he can approach the competent Civil Court and establish his rights. Without resorting to the same, he cannot simply give any representation to the official respondents and seek the indulgence of this Court to direct the official respondents to consider the said representation and pass orders thereon and therefore, the prayer sought for in this writ petition is liable to be rejected, he contended.

7. In the light of the said submission, Mr. Richardson Wilson learned counsel for the Government appearing for the official respondents would submit that, whether the land in question, which according to the petitioner has been used as ingress and egress to the land of the petitioner, belonging to the Forest Department or Government Department or Government Poramboke land is a matter of record and assuming that it is a forest land and patta has been granted in favour of the fifth respondent, it is a lis between the Forest Department and the fifth respondent. Therefore, in this regard the petitioner cannot have any locus to question the same.

8. Assuming the petitioner has got any easementary rights over the property, that also should be established in the manner known to law by approaching the competent Civil Court. Without following the same, the petitioner cannot simply make a representation and invoke Article 226 of the Constitution of India seeking a writ of mandamus for a direction to the respondents to consider the representation. Therefore, the writ petition is liable to be rejected, he contended.

9. I have considered the submissions made by the learned counsel on either side and have perused the materials placed on record.

10. As has been rightly pointed out by the learned Government Advocate as well as the fifth respondent, the merits of the claim of the petitioner through his representation dated 25.08.2016 cannot be resolved by the first respondent District Collector because, the land which is sought to be used by the petitioner by way of ingress and



gress to his own property, assuming it being a Government land, whether it is Government land or not, has to be established and even the easementary right of the petitioner has to be proved and established before the competent Civil Court by adducing evidence. Without resorting to the said legal method, the petitioner cannot simply make a representation to the District Collector to cancel the patta given in favour of a third party, where admittedly the property in question was not belonging to the petitioner.

11. In that view of the matter, this Court is inclined to agree with the submissions made on behalf of the respondents. Hence, the plea raised by the petitioner is liable to be rejected. Accordingly, this writ petition fails and hence it is dismissed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KST

To

1.The District Collector
Perambalur District
Perambalur.

2.The District Revenue Officer
Perambalur District, Perambalur.

3.The Tahsildar
Perambalur District.

4.The District Forest Officer
Perambalur District
Perambalur.

+1cc to M/s.P.Jagadeesan, Advocate SR.No. 28569

+1cc to Mr.R.Jayaprakash, Advocate SR.No. 28255

+1 cc to Government Pleader Sr.No. 28440

W.P.No.22718 of 2017

PMK (CO)

B.VC(23.07.2021)